

(tôrt) *n.* A civil wrong or injury.

(fē'zər) *n.* One who commits
or is guilty of a tort.



Tort Feasor

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FOR WANT OF A SIGN . . . One sunny weekend afternoon, Mr. and Mrs. Smith were riding their motorcycle on a scenic mountainous highway. As they rounded a curve, Mr. Smith lost control, ran off the highway, and struck a tree. Mrs. Smith was thrown clear but Mr. Smith suffered serious injuries. A large directional arrow sign was in place before the curve, but it was discovered two other signs, an advance-curve and a speed advisory sign, had been missing for up to four years. The Smiths sued alleging the missing signs caused the accident.

"ONE MILLION OTHER MOTORISTS DROVE THROUGH THE CURVE UNDER ALL TYPES OF CONDITIONS WHILE THE SIGNS WERE MISSING," ARGUED OUR ATTORNEY. "THIS SHOWS DESPITE THE MISSING SIGNS, THE HIGHWAY WAS SAFE AND MR. SMITH CAUSED THE ACCIDENT BY RIDING TOO FAST FOR CONDITIONS."

Plaintiffs' counsel presented evidence that Department personnel conducted three annual inspections while the signs were missing. The first two failed to discover they were gone, and although the third did note their absence, they were not replaced until months later in response to the lawsuit. Plaintiff's counsel used these facts to inflame the jury against the Department and emphasized how the Smiths' lives and marriage would never be the same. After two days of deliberations, the jury awarded plaintiffs a multi-million dollar verdict.

TORT REPORT: *In this case the sign inspections were performed at night by a single worker who noted only non-reflective or damaged signs; the worker did not note missing signs. Chapter M of the Maintenance Manual requires an annual night sign inspection, but also permits informal inspections in daylight hours – a good time to look for missing signs. For night inspections, the Manual also suggests sending more than one worker. If your yard performs only one annual nighttime sign inspection, consider sending at least two workers out with sign logs to note missing signs. If the signs logs are not current, request updated ones. When the inspection is done, follow-up to ensure any noted signs are promptly repaired or replaced.*

EXCEEDING STANDARDS . . . Early one weekday morning, Jim waited at a bus stop on a frontage road to go to work. Bob was driving on the adjacent freeway when he swerved to avoid a big rig truck coming into his lane. Unfortunately, Bob overcorrected, drove off the freeway, knocked over a tree, blasted through a right-of-way fence, struck and severely injured Jim. He and his wife sued alleging lack of a guardrail and inadequate separation between the freeway and frontage road caused a dangerous condition of public property.

Their attorney presented evidence of other accidents in the area where cars struck trees after running off the freeway and he argued this made it foreseeable people at the bus stop were at risk. He also showed that at the time of the accident, a project was planned to install guardrail between the roads. The project report, however, explained the guardrail was to shield freeway motorists from striking trees, it mentioned nothing about problems with the frontage road. The plaintiffs' attorney also pointed out the design plans called for thirty-eight feet of separation between the roads, but there was actually only thirty-seven feet.

"THE DESIGN MANUAL RECOMMENDS A MINIMUM OF TWENTY-SIX FEET OF SEPERATION BETWEEN FREEWAYS AND FRONTAGE ROADS," COUNTERED OUR ATTORNEY, "HERE THERE WAS THIRTY-SEVEN FEET." "ALSO, WITH THIS MUCH SEPERATION, NO GUARDRAIL IS REQUIRED." "FINALLY, ALTHOUGH OTHER VEHICLES HAVE STRUCK TREES, NONE HAS EVER PENETRATED THE RIGHT-OF-WAY FENCE OR HIT A PEDESTRIAN, BICYCLIST, OR VEHICLE ON THE FRONTAGE ROAD."

TORT REPORT: *The judge found the plaintiffs' arguments unconvincing and dismissed the lawsuit. As in most cases that are summarily dismissed, good documentation won the day here. The project report stated the purpose of the planned guardrail was to protect motorists from hitting trees which undercut plaintiffs' argument the Department had notice the lack of guardrail posed a risk to users of the frontage road. Also helpful was the design engineers' decision to exceed minimum design standards.*

BEWARE OF SHINY OBJECTS . . . A married couple crossing a state highway in a marked crosswalk got part way across when the wife stopped to look at an object on the road. Meanwhile Bill approached the intersection in his sedan and saw the couple crossing the street. By the time he got to the crosswalk, the husband was safely across, but at the last second the wife turned and unexpectedly stepped in front of Bill's car and was hit. She died of serious injuries caused by the unfortunate accident.

Her family sued alleging the intersection was not properly signed and the speed limit too high. The highway, however, was straight and flat with no visual obstructions to or from the crosswalk. Also, a crosswalk signing and striping package was in place complete with two crosswalk warning signs in each direction and "PED XING" stenciled in the lanes. The crosswalk itself was clearly marked. During the prior ten years, there were a number of vehicle-versus-vehicle collisions at the intersection, but none involved a pedestrian. Several years before, the District investigated the intersection and installed a "cross traffic does not stop" sign due to a high concentration of broadside vehicle collisions but found nothing suggesting the intersection was dangerous for pedestrians.

"THERE'S NOTHING DANGEROUS ABOUT THE INTERSECTION OR THE CROSSWALK," ARGUED OUR ATTORNEY TO THE JUDGE. "ALSO, THE LACK OF OTHER SIMILAR ACCIDENTS SHOWS IT IS SAFE FOR PEDESTRIANS USING DUE CARE."

Plaintiffs' counsel argued the accident history proved the intersection was dangerous. The judge, however, found the other accidents were irrelevant because they did not involve pedestrians. He also disregarded the traffic investigation because there was no evidence it was triggered by pedestrians getting hit. Finally, the judge found plaintiffs failed to show any highway defect contributed to the accident. Plaintiffs appealed the judge's ruling, but the higher court approved dismissal of the case.

TORT REPORT: *Unfortunately the Department sometimes gets sued just because it controls the highway where an accident happens. When we focus on doing our jobs, however, defending lawsuits usually takes care of itself. In this case, Traffic Operations personnel saw the need for and approved the crosswalk package, and the signing and striping crews installed it according to plan. After installation, the striping, signing, and pavement were properly maintained. When a high collision rate required an investigation, Traffic Safety personnel responded promptly and wrote an objective report documenting their findings and justifying their recommendation.*

LEGAL BITS: Kudos to L.A. attorney Paul Brown on a design-immunity/trivial risk msj victory. Great job to Jeff Lovell, HQ Legal, for publication of the Salas decision. (198 Cal.App.4th 1058) Last but not least, HQ lawyer extraordinaire, Richard Mitchell, is trading in his briefcase for a backpack. Happy trails friend.